IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11098 of 2001
with
Special Civil Application No 3821 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAGDISHBHAI MAFATLAL PATEL
Versus
STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11098 of 2001
MR ND NANAVATI SR. ADVOCATE WITH MR PUSHPADATTA VYAS for Petitioners
MR KAMAL TRIVEDI ADDL. ADVOCATE GENERAL WITH MR. PREMAL JOSHI AGP for Respondent Nos. 1-2
MR KG VAKHARIA SR. ADVOCATE WITH MR TUSHAR MEHTA for Respondent Nos. 4-15

2. Special Civil Application No. 3821 of 2001
MR BS PATEL for petitioners
MR KAMAL TRIVEDI ADDL. ADVOCATE GENERAL WITH MR. PREMAL JOSHI AGP for respondent Nos.1-2
MR KG VAKHARIA SR. ADVOCATE WITH MR TUSHAR MEHTA for respondent Nos.4-15

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 27/12/2001

COMMON C.A.V. JUDGEMENT

1. What is challenged in these two petitions which are filed under Article 226 of the Constitution of India, are two orders, both dated November 23, 2001 and issued by the Director (Sugar), Gujarat State, Gandhinagar, removing the petitioners as Directors of the Vadodara District Co-operative Sugarcane Growers Union Limited and Sardar Cooperative Sugar Industries Limited ('the Societies' for short) and appointing respondent Nos.4 to 15 as Directors of the Societies as per bye-laws No.21 (2) (A) and 8 (B) (1) of both the respective Societies.

2. As both these petitions involve determination of common questions of facts and law, by the consent of the learned advocates appearing for the parties, the matters are taken up for final hearing and I propose to dispose them of by this common judgment.

3. In order to appreciate the controversy between the parties, it would be advantageous to refer to the facts stated in Special Civil Application No. 11098 of 2001.

4. The averments made and the grounds set out in the petition manifest that the petitioners were the Board of Directors of the Society which is registered on January 6, 1990 under the provisions of the Gujarat Cooperative Societies Act, 1961 ('the Act' for short). As per bye-law No.21 of the Society the Board of Directors is required to be formed by 25 members including the Managing Director of the Society. In the byelaw No.21 (2) (A), it has been specified that whatever is written in the byelaws, respondent No.2 with the consent of respondent No.1 shall appoint the First Board of Directors for a period of five years which can be extended by respondent No.2 with the consent of respondent No.1 but for a period not more than five years from the date of first crushing of sugarcane. In view of the provisions of proviso to Section 74 (C) of the Act and byelaws, respondent No.2 with the approval of respondent No.1 exercised powers and nominated the First Board of Directors of the Society appointing petitioner No.1 as Chairman.

5. Because of several constraints the factory could not start the crushing of sugarcane. Therefore, respondent No.2 vide order dated February 10, 1999, with

the consent of respondent No.1 extended the term of Board of Directors for a further period of five years from the date of commencement of crushing of sugarcane or till further orders. The Society started its crushing on November 1, 1999 and hence the term of Board of Directors had been extended for a period of five years upto October 31, 2004. It is averred by the petitioners that though the Society started functioning and was on the path of progress the petitioners apprehending that in view of change in political power there can be a political evasion against the society, passed a resolution for holding election of Board of Directors of the Society under Chapter XI-A of the Act. As per section 74-C of the Act, only the First Board of Directors is to be nominated and subsequent Board has got to be elected and therefore the society addressed a letter to the Collector, Vadodara and to respondent No.2 for holding election under Section 74-C of the Act. It is further averred that the Collector, Vadodara informed the society by a letter dated August 7, 2001 that as the tenure of the present Board of Directors has not expired, the election cannot be held, specifically mentioning that the first Government nominated Board of the Society is still managing the affairs of the society and so before the expiry of that term, no election can be held. Respondent No.2 also gave a similar reply by his letter dated August 23, 2001. It is specifically averred by the petitioners that the petitioners, more particularly petitioner Nos.1, 4 and 10 are actively connected with number of institutions and had held high positions in Cooperative Societies in the past. Respondent No.4 is a prominent worker of BJP and has just joined the party and others have been appointed on the basis of their own political attachment with the present party in power and many of them are even not sugarcane growers and are not even members.

6. It is specifically averred that on November 23, 2001, respondent No.2 passed an order replacing the existing Board of Directors by appointing respondent Nos.4 to 15 arbitrarily without giving any opportunity of being heard to the petitioners. It is further averred that this order is out of a political malafide which can be seen by the actions of respondent No.4 who had rushed with the order which had been passed by respondent No.1 on November 23, 2001 and on the same day the order has been passed by respondent No.2 and respondent No.4 with his associates and the District Registrar (Sugar) Cooperative Societies, Surat reached in the evening hours in the factory of the society and persuaded the Managing Director to hand over the charge. It is this order dated

November 23, 2001 replacing the existing Board of Directors by appointing respondent Nos.4 to 15 which has given rise to the present petitions.

7. The petitions are hotly contested by respondent Nos.1 and 2 by filing affidavit in reply which is sworn by B.R. Katara, Director of Sugar, Gujarat State, Gandhinagar, wherein, inter alia, it is stated that the State of Gujarat has subscribed to the share capital of the said society to the extent of Rs.13.11 crores. Besides this, the State Government has guaranteed payment of term loan of 60% of project cost which comes to Rs.25.64 crores. It is further stated that as per bye-law 21 (2) (A) of the Society, Director of Sugar has the right/power to nominate the First Managing Committee with the consent of the State Government. In the present case the First Board i.e., the Managing Committee was nominated by the Director on December 14, 1990 and same term was extended by order dated February 10, 1999. Thus, no fixed minimum term of office for the members of the First Managing Committee was stipulated. Therefore, the First Managing Committee is functioning with a new composition and that the said Managing Committee cannot be said to have been nominated for the second time as alleged by the petitioners. It is further stated that the said right and/or power to nominate would also include the power to change the composition of the committee. It is further stated therein that State Government has subscribed to the share capital of the society and guarantee has also been given and hence State has a large and direct financial stake and/or interest in the society and the competent authority viz., respondent No.2 apart from being empowered to change the composition, is also vitally interested in proper and harmonious functioning of the said society, that therefore, it has got all the rights to see that there is a smooth, effective and harmonious functioning of the said board/Managing Committee with the State Authorities so that there is no discord between the Government and the Managing Committee of the society and that the functioning thereof is effective and harmonious. In view of this there need not be any judicial resistance to reading in to the provisions of the Act and bye-laws, a pleasure doctrine. The petitioners were nominated vide order dated December 14, 1990 and they were so nominated with the pleasure of the Government at the relevant time. This was neither an appointment nor an employment under the State Government. It is true that vide order dated November 23, 2001, the composition of the first committee is changed by nomination of other members but that development cannot by any stretch of imagination, be

dubbed as nomination of the board/managing committee for the second time. It is stated that as required in the bye-laws, the State Government's consent is necessary and the State Government granted its consent vide order dated April 23, 2001 and with the said consent, the impugned order is passed. Lastly, the malafide alleged in the petition is denied by respondent No.2.

8. The petitions are hotly contested by respondent Nos.4 to 15 also by filing reply affidavit which is sworn by Jaykantbhai Ambalalbhai Patel, respondent No.4 herein, wherein all the allegations made in the petitions against the replying respondents have been categorically denied. The malafide alleged is also denied. It is further inter alia stated the newly nominated managing committee has already taken over the charge and has started functioning as managing committee discharging their day-to-day functions and its first meeting dated November 26, 2001 is already held. It is further stated that bye-law No.21 (2) (A) empowers the Director (Sugar) to nominate the members of the managing committee. The said power of nomination is capable of being exercised from time to time and the persons nominated under the said power holds the office as members of the committee during the pleasure of the authority appointing them and during the tenure stipulated under the bye-laws, the composition of the First Committee can be altered and it would function as first committee only. Changing the composition of the first committee does not and cannot be treated as appointment of a second committee. The statutory authority empowered to nominate the members can always change the composition of the said nominated committee and "doctrine of pleasure" would apply while the authority exercises the said powers. It is also stated that the petitioners were appointed by order dated December 14, 1990 and they were appointed purely on political considerations as they belonged to the party supporting the Government at the relevant point of time and the period was for five years or till the next order is passed by the competent authority at its pleasure in exercise of its powers to change the composition of the committee. The term was further extended for a further period of five years but in view of the fact that respondent No.2 is empowered to change the composition of the committee, doctrine of pleasure would apply and by exercising such powers respondent No.2 has passed the order changing the composition of the committee by which the petitioners came to be replaced by nominating respondent Nos.4 to 15. It is averred that when allegations of malafides are made out to be a ground for challenging the exercise of statutory powers, the

petitioners must point out detailed facts for the purpose of alleging malafides. Some vague allegations of malafides would not vitiate an order passed bonafide in exercise of the powers conferred upon the authority exercising the powers. It is further averred that the petitioners have not at all pleaded malafide and the allegations are made only to make out a ground of challenge. It is averred that the newly nominated managing committee has already taken over the charge and has started functioning as managing committee discharging their day-to-day functions. The newly nominated managing committee has held its first meeting on November 26, 2001 and it has started functioning. It is further averred that after the newly nominated committee took over the management on November 24, 2001 and after its taking over the charge, the society has started progress rapidly and everyday there is an increase in sugar cane crushing to an extent of 200 MT and more. It is also averred that the sugarcane crushed as on November 23, 2001 was 2760 MT and as on November 26, 2001 it has reached to 2990 MT because of the effective steps taken by the newly nominated committee and this fact demonstrates that the decision taken by the State Government to nominate the new committee and the selection of the members in the new committee is proved to be in the advantage of the society concerned. It is also averred that the persons nominated by the order impugned in the petition have experience and have the majority support of the members of the said society and it is denied that their appointment is only because of their political affiliation as alleged or otherwise. It is further averred that the order is passed by the State Government in the larger interest of the members of the said society and ultimately it is prayed that the petitions may be dismissed with exemplary cost.

9. Mr. Nanavati, learned Senior Advocate who appears for the petitioners of Special Civil Application No. 11098 of 2001 contended that the order impugned is passed in an unholy haste which can be reflected the way and the manner in which it was served on the petitioners with the help of newly nominated Chairman, i.e., respondent No.4 who came personally with the order. This very fact reflects that the respondents wanted to upset the existing First Committee of management. Not only that, they also wanted to see that if any opportunity is given, then the outgoing body would obtain stay order from Court and their purpose and ill-design may get frustrated. What is emphasized by the learned counsel is that the order is passed at the behest of the State Government and, therefore, it was passed at the dictation

and command of the State Government and, therefore, it is arbitrary, malafide and the powers vested in him by the statute are not exercised by him bonafide. He submitted that on the aforesaid two grounds the impugned order deserves to be quashed and set aside.

Mr. Nanavati, learned counsel has also relied upon Sections 74C, 80 and 80A of the Act. What is stressed by the learned counsel is that if bye-laws of the society so provide then only the State Government acquire powers to appoint the First Committee but if the bye-laws do not so provide then the State Government has no authority even to nominate the First Committee.

The learned counsel further contended that Director of Sugar is not the State Government and as there is no delegation of powers in his favour, the power exercised by him is beyond his authority and jurisdiction.

It is pointed out by the learned counsel that the First Committee means the First Committee which cannot be substituted by second committee. By the impugned order, the respondents have substituted the second committee and, therefore, the impugned order is passed in clear violation of the law and contrary to the provisions of the Act as well as bye-laws of the society.

It is emphatically contended by the learned counsel that bye-law 21 (2) (A) of the Society is inconsistent with the provisions of the Act and, therefore, Director of Sugar has no power to appoint the First Committee though bye-law 21 (2) (A) of the Society may so provide and to that extent the bye-law is ultra vires Section 74C of the Act.

The learned counsel has also invited the attention of this Court to Sections 9 and 13 of the Act. He has also drawn the attention of this Court that the first appointment was made by order dated December 14, 1990 and again the term was extended in the year 1999 for a further period of five years. Therefore, this action on the part of the respondent authorities is inconsistent with the provisions of section 80A of the Act as the term not exceeding two years in aggregate came to an end in the year 1997 and, therefore, the learned counsel urged that after the year 1997 election should have been held in view of the provisions of Section 80A (b) of the Act as on the expiry of the aforesaid period, no extension could be granted. In the alternative, he has urged that a Custodian may be appointed for a further period of two

years or election should be held. It was pointed out by the learned counsel that the petitioners have approached the Director of Sugar and the District Collector in this behalf requesting them to hold election.

So far as the invocation of the pleasure doctrine is concerned, the learned counsel contended that on the facts and in the circumstances of the case it cannot be invoked as there are statutory provisions of the Act and bye-laws of the society which unequivocally suggest that the Government can nominate the First Committee for a period of five years.

By referring to the averments made in the reply affidavit filed on behalf of the State Government wherein it is averred that the State Government has invested huge amount and stood as a guarantor, the learned counsel contended that they are hardly relevant factors to be considered for appointment of the First Committee. He submitted that even if the State Government has not made any investment, bye-laws of the Society provide that they cannot change the entire committee and, therefore, the impugned order requires to be quashed and set aside.

On the aforesaid premises, the learned counsel contended that the impugned order passed by the respondent authority is a colourable exercise of power, arbitrary and malafide and, therefore, deserves to be quashed and set aside. In the alternative he urged that appropriate orders may be passed for holding election of the Committee of Management in the interest of justice.

In support of the aforesaid contentions, the learned counsel has relied upon the following judgments:

(i) Tarlochan Dev Sharma v. State of Punjab and others, (2001) 6 SCC 260.

(ii) Anirudhsinhji Karansinhji Jadeja v. State of Gujarat, (1995) 5 SCC 302.

(iii) Ambalal Manilal Makwana v. Khambhat Taluka Sahakari Kharid Vechan Sangh Ltd., XVI GLR 382.

(iv) Interim order dated September 26, 1995 rendered by Division Bench of this Court (Coram: R.A. Mehta, Actg. C.J. & H.L. Gokhale, J.) in Special Civil Application No. 6960 of 1995.

10. Mr. Bharat S. Patel, learned advocate who appears for petitioners of Special Civil Application No. 3821 of 2001 has adopted all the contentions advanced by Mr. Nanavati. Besides those contentions, he contended that the First Committee in respect of this petition was appointed on November 10, 1997, the term of which would

expire on November 9, 2002 and before expiry of the said term the respondent authorities ought not to have passed the impugned order as period of five years is not over. He further contended that the respondent authorities have two options after the expiry of the period of five years i.e., extend the term of the first committee or to hold the elections. The powers either to extend or to hold election shall not constitute the power to change the committee. By referring to the impugned order he contended that the impugned order does not state that the powers are exercised under the statutory provisions but it is stated therein that the order is passed in exercise of the powers under the bye-laws of the society itself. Therefore, according to Mr. Patel, the impugned order is passed in colourable exercise of powers, arbitrary and malafide and cannot be sustained in the eyes of law. He, therefore, urged that the impugned order may be quashed and set aside.

11. Mr. Kamal Trivedi, learned Additional Advocate General who appears for respondent Nos.1 and 2, contended that the impugned order passed by the Government is in exercise of the powers vested in the authority as per the statutory provisions of the Act as well as bye-laws of the society. According to him, when the society goes for registration, bye-laws are required to be got approved by the authority and at the time of approval of the bye-laws, it would be scrutinised by the Registrar. He contended that the procedure for registration of the society and the procedure for approval of the bye-laws of the society has been undergone and the society is registered and the bye-laws are approved by the Registrar. In this connection, the learned Additional Advocate General has referred to Sections 8 and 9 of the Act and contended that if the contention propounded by Mr. Nanavati, learned Senior Advocate for the petitioners of Special Civil Application No.11098 of 2001 with regard to the formation of the First Committee as illegal, is accepted, then the order by which the First Committee is appointed is also illegal. If that is so, the petition filed by the petitioners is not maintainable. On this ground alone the petition deserves to be rejected.

According to him, it is a prerogative of the Director of Sugar with the consent of the Government to nominate the Chairman and Vice Chairman of the First Committee of Management. The term of this committee is five years, i.e., five years from the date of commencement of crushing. In the instant case, the crushing commenced in the month of November 1999.

Therefore, the outer limit of the tenure of the committee is 2004 in both the cases and till the outer limit expires the committee has the right to continue. If the outer limit expires, elections are to be held. The sum and substance of the submissions made by the learned Additional Advocate General is that the bye-laws of the society permitted nomination of the members of the committee or Board for the maximum outer limit of five years from the commencement of crushing and admittedly the crushing commenced on November 1, 1999.

It is stressed by the learned Additional Advocate General that if one reads Section 80 of the Act it gives sweeping discretion to the State Government and the cumulative reading of the approved bye-laws, Section 74C (3) (b) and Section 80 of the Act empowers the Director of Sugar, respondent No.2 to effect nomination of the members in the Managing Committee or the Board with the consent of the State Government. It is emphatically contended by him that so far as nomination of three members is concerned, pleasure doctrine can be invoked. It is further contended by him that so far as the bye-laws are concerned, they start with non-obstinate clause, meaning thereby, right to nomination by the Director of Sugar with the approval of the State Government is very much established and, therefore, it cannot be disputed that nomination can be extended from time to time and similarly it cannot be recalled by appointing new Directors which is purely in the realm and discretion of respondent No.2 with the approval of respondent No.1 - State Government. According to him, the bye-laws are consistent with the provisions of the Act and, therefore, the petitions are not maintainable.

The learned Additional Advocate General has also relied upon Section 80A of the Act which empowers the Government to extend the term of nominated committee or appointment of custodian. The said Section provides that the term can be extended for such period not exceeding two years in the aggregate or until a new committee of management is elected, whichever is earlier. It is further contended by him that if the bye-laws are not ultra vires, in that eventuality, the Director of Sugar has power to nominate somebody for a period of five years, then during his tenure he has the right to remove him.

Lastly it is contended that the pleasure doctrine can very well be invoked in this case in view of the fact that the right to nominate includes the right to terminate or recall the nomination. He, therefore,

submitted that there is no substance in the petitions as the impugned order is passed bonafide without stigma by exercising the pleasure doctrine. He, therefore, urged that the petitions may be dismissed.

In support of the aforesaid contention, the learned Additional Advocate General has relied upon the following judgments:

(i) Amreli District Co-operative Sale & Purchase Union Ltd., v. State of Gujarat, 1984 (2) GLR, 1244.

(ii) Ghanshyam Singh v. Union of India, AIR 1991 Delhi 59.

(iii) Amarjeet Kaur v. Union of India, 43 (1991) Delhi Law Times, 262.

(iv) Unjha Agricultural Produce Market Committee v. State of Gujarat, 1999 (1) GLR 406.

(v) Dattaji Chirandas v. State of Gujarat, 1999 (3) GLR 2189.

(vi) Harisinh Pratapsinh Chavda v. Chimanbhai J. Patel, Chief Minister, 1991 (1) GLR 667.

(vii) Krishna s/o. Bulaji Borate v. State of Maharashtra, (2001) 2 SCC 441.

(viii) Sharad Vasant Kotak v. Ramniklal Mohanlal Chawda, AIR 1998 SC 877.

(ix) Interim order dated December 24, 1997 passed by this Court (Coram: J.M. Panchal, J.) in Special Civil Application No. 7408 of 1997.

12. Mr. K.G. Vakharia, learned Senior Counsel who appears for respondent Nos.4 to 15 of both the petitions, has adopted all the submissions advanced by Mr. Kamal Trivedi, learned Additional Advocate General in support of his case. Besides this, he contended that the petitioners have not challenged the bye-laws and, therefore, they are deprive of taking such plea as principles of acquiescence would apply. In support of the aforesaid contention, Mr. Vakharia has relied upon the judgment of a Division Bench of this Court in the case of Laxmanbhai Bhagwanbhai Sukhadia v. Kunkavav Vaida Taluka Panchayat, reported in X GLR 8. What is emphasized by the learned counsel is that these are political assignments and, therefore, change in the power by newly elected Government would obviously lead to change in the nominations which were made by the previous Government and, therefore, pleasure doctrine is applicable to the facts of the present case. According to him, the petitioners ought to have resigned with the change in the newly elected Government and since they failed to tender their resignation, the party in power invoked the pleasure doctrine and recalled the

nominations given by the previous Government which can never be called a penal action. He, therefore, submitted that the challenge made to the impugned order in these petitions has no substance and, therefore, the petitions may be dismissed with costs.

13. I have considered the submissions advanced by the learned counsel appearing for the respective parties. I have also perused the averments made in the petitions as well as the reply affidavits one which is sworn by Mr. B.R. Katara, Director of Sugar, Gujarat State, Gandhinagar, respondent No.2 and another by respondent No.4 of Special Civil Application No.11098 of 2001 Jaykantbhai Ambalalbhai Patel and also the affidavit in rejoinder sworn by Jagdishbhai Mafatbhai Patel, petitioner No.1 of Special Civil Application No. 11098 of 2001. I have also referred to the relevant provisions of the Act as well as the judgments cited at the bar by the learned counsel for the parties.

14. At the outset it may be noted that so far as petitioners of Special Civil Application No. 11098 of 2001 are concerned, they were nominated Directors of the Board of Directors of Vadodara District Cooperative Sugarcane Growers Union Limited at Gandhara, Taluka Karjan, District Vadodara which is a Co-operative Society registered under the provisions of the Act on January 6, 1990 and the said Directors were nominated by virtue of bye-law 21 (2) (A) of the Society. Similarly, so far as the petitioners of Special Civil Application No.3821 of 2001 are concerned, they were nominated Directors of Sardar Co-operative Sugar Industries Limited at Ladhod, Taluka Sankheda, District Vadodara. They were nominated by virtue of bye-law 8 (B) (1) of the Society. There is no dispute about the fact that bye-law 21 (2) (A) and bye-law 8 (B) (1) of the Societies are parimateria and by virtue of both these bye-laws the petitioners of both the petitions came to be nominated as Directors of the Board of Directors of the Societies.

15. Petitioners of Special Civil Application No. 11098 of 2001 were first nominated vide order dated December 14, 1990 for a period of five years and on afflux of that time the said petitioners were further nominated vide order dated February 10, 1999 again for a further period of five years by the Director of Sugar, Gujarat State, Gandhinagar. So far as the petitioners of Special Civil Application No. 3821 of 2001 are concerned, they were nominated vide order dated November 10, 1997 for a period of five years by the Director of Sugar. It is an admitted fact that both the Societies

came to be registered with bye-laws under the provisions of the Act with substantial amount of contribution which runs into crores of rupees from the State Government in the share capital of the Society and further with the guarantee from the State Government guaranteeing repayment of term loan, that is, 60% of the total project cost. It is not in dispute that the first committee of management of the Society in respect of Special Civil Application No. 11098 of 2001 came into being on December 14, 1990 for a period of five years by way of nomination. Similarly, the first committee of management of the Society in respect of Special Civil Application No. 3821 of 2001 came into being on November 10, 1997 for a period of five years by way of nomination. Both these societies started crushing sugarcane on November 1, 1999 and November 31, 1999 respectively. The impugned order came to be passed on November 23, 2001 and thereby the petitioners of both these petitions came to be replaced by respondent Nos.4 to 15 as per bye-law 21 (2) (A) and 8 (B) (1) of the respective Society.

16. There is no manner of doubt that the bye-laws of both the societies are duly approved by the Registrar while registering the societies and are duly adopted at the general meeting of the society. It may be appreciated that the petitioners have not challenged the said bye-laws. However, they contended that the said bye-laws are ultra-vires Section 74C (3) of the Act.

17. To examine the aforesaid contention, it would be advantageous to refer to Section 74C (3) of the Act which reads as under:

"74C. Provision for conduct of elections committees and officers of certain societies and term of office of members of committees.--

(1) xxxxx xxxxx xxxxx

(2) xxxxx xxxxx xxxxx

(3) Notwithstanding anything in the bye-laws of any such society , the committee of management shall be elected by a general body of members of the society and all other committees authorized by or under the bye-laws may be constituted by electing or appointing persons from among the persons who are members of the committee of management, and all such committee shall be sub-committees of the committee of management, and shall be subordinate to it:

Provided that it shall be lawful for the State Government,

(a) to nominate its representatives on a

Committee of any such society under section 80, or

(b) to nominate the first Committee of Management of any such society where the bye-laws of such society so provide.

Provided further that it shall be lawful for any body or authority to nominate its representation on a committee of such society where the bye-laws of such society so provide."

On having look at the aforesaid provisions, it is clear that proviso (b) to sub-section (3) of section 74C of the Act envisages that it shall be lawful for any body or authority to nominate the first committee of management of any such society where the bye-laws of such society so provide.

18. On having perusal of the bye-laws which are challenged in the oral submissions made by Mr. Nanavati, it can be seen that the Director of Sugar, with the consent of the Government, can nominate the Directors. Therefore, it is not permissible for one to contend that bye-law No.21 (2) (A) is contrary to the said provisions of the Act. On the contrary, the aforesaid proviso has made the provisions of the Act subject to the provisions of the bye-law in question. The said bye-law empowers respondent No.2 to nominate, with the consent of the Government, first committee of management and it came into being on December 12, 1990 for a period of five years by way of nomination and on afflux of time, the said period was extended vide order dated February 10, 1999 for a further period of five years by way of further nomination. There is a rider that the outer limit thereof should not exceed the period of five years from the date of commencement of crushing and, therefore, the period of five years to be reckoned from November 1, 1999 in respect of Special Civil Application No. 11098 of 2001 and November 31, 1999 in respect of Special Civil Application No. 3821 of 2001. Therefore, it can be said that the said bye-laws have given birth to the nomination of the petitioners as Directors not once but twice and they were holding the office till November 23, 2001 when the order came to be passed by the Director of Sugar recalling their nominations and replacing them by respondent Nos.4 to 15 and, therefore, the contention that the said bye-laws are ultra-vires has no substance.

19. Besides this, the petitioners have not taken the plea challenging the bye-laws by seeking declaration that the said bye-laws are ultra-vires Section 74C of the Act.

Therefore, principles of acquiescence would apply in view of the judgment of this Court in Laxmanbhai Bhagwanbhai Sukhadia's case (supra). In the said case, Division Bench of this Court has observed as under:

> "The doctrine of acquiescence put in simple language is that if a person who has a right and seeing another person committing an act in a manner that infringes upon that right, stands by or conducts himself in such a manner as to induce the person committing the act, and who might otherwise have abstained from it, to believe that he assents to it being committed, he cannot afterwards be heard to complain of the act. It may be that when a right is infringed the aggrieved party is entitled to two inconsistent alternative remedies and he may elect to resort to one which he may think prudent to chose and which may work out his purpose, but once he makes his choice and adopt one of the alternative remedies his act would debar him as regards the other."

In this view of the matter also the contention that bye-law 21 (2) (A) is ultra-vires the statutory provisions of Section 74C of the Act has no substance and therefore the said contention is rejected.

20. It may also be appreciated that by virtue of Section 80 of the Act, the State Government is empowered to nominate three members of the committee of the management of the society despite what is mentioned in the bye-laws. As per Section 80, where the State Government has subscribed to the share capital of a society, directly or through another society, or has guaranteed the repayment of the principal of and payment of interest on, debentures issued or loans raised by a society, the State Government shall, notwithstanding anything contained in the bye-laws of such society, have the right to nominate three representatives on the committee of such society in such manner as may be determined by the State Government from time to time. The members so nominated shall hold the office during the pleasure of the State Government, or for such period as may be specified in the order by which they are appointed. Therefore, the way in which Section 80 of the Act refers to the doctrine of pleasure with the State Government in the matter of nominating its representation on the committee of management of the society, even bye-laws 21 (2) (A) and 8 (B) (1) also contain the said doctrine of pleasure to be exercised by respondent No.2, Director of Sugar, who is the Registrar under the Act, with the consent of the State Government. In view of the

aforesaid state of affairs also, the doctrine of pleasure can very well be invoked in respect of the nominations and recall of nominations made by the Director of Sugar.

21. The contention that in view of Section 80A of the Act, tenure of the nominated first committee of management would not go beyond the period of two years and since the bye-law provides for extension of said period for a further period of two years, the said bye-law is ultra-vires Section 80-A of the Act has also no substance. To appreciate the aforesaid contention, it would be advantageous to refer to Section 80A of the Act which reads as under:

"80A. Extension of term of nominated committee or appointment of custodian.-(1) Where on the expiry of the term of office of the members of any committee of management nominated by the State Government, or the Registrar, the State Government or, as the case may be, the Registrar is of the opinion that it is necessary or expedient so to do, it or he may, by an order published in the official gazette.--

(a) extend the term of office of the members of the said committee of the management; or

(b) appoint a person or a committee of persons to be the custodian of the society;

for such period not exceeding two years in the aggregate or until a new committee of management is elected, whatever is earlier.

(2) xxxxx xxxxx xxxxx

(3) xxxxx xxxxx xxxxx."

On having bare reading of the provisions of the aforesaid Section, it is seen that if the Registrar is of the opinion that it is necessary or expedient so to do, the State Government or he may, by an order published in the Official Gazette either extend the term of office of the members of the committee of the management or appoint a person or a committee of persons to be the custodian of the society for such period not exceeding two years in the aggregate or until a new committee of management is elected, whichever is earlier. Here the outer limit of the term of the first committee of the management is 2004, meaning thereby, the committee so nominated shall function upto 2004 only and thereafter election is a must and in view of bye-law 21 (2) (A) there should be election on expiry of the term of five years from the

commencement of crushing.

22. Notwithstanding the aforesaid factual scenario, by virtue of Section 80A of the Act, if the Registrar is of the opinion that it is necessary or expedient so to do, he may extend the term of the said committee of management for such period not exceeding two years. Therefore, the Registrar has the power to continue the nominated members even for a period of two years from 2004.

23. A Division Bench of this Court in Amreli District Co-operative Sale & Purchase Union's case (supra) has reiterated the aforesaid legal position. In the said case, whole of Section 80 of the Act was subject matter of challenge. This Court upheld the validity of Section 80A of the Act. In view of this, the contention that Section 80A of the Act would not empower the Government to nominate beyond the period of two years from the date of expiry of term of the first nomination, that is, 1995, has no substance.

24. It may also be appreciated that there is no dispute about the fact that the petitioners were simply nominated (not elected) in the first committee of the management of the society by the Government at the relevant time vide order dated December 14, 1990, for a period of five years or till further orders. If we read the order dated December 14, 1990 together with bye-law 21 (2) (A) it becomes abundantly clear that the initial nomination of the petitioners till further orders was on the basis of pleasure and subjective satisfaction of the Director of Sugar and the State Government, who have inherent powers to recall or revoke the said order at their free will.

25. In Ghanshyam Singh's case (supra), the Supreme Court while considering the validity of the provisions contained in the Multi-State Cooperative Societies Act (51 of 1984), has held that nomination of an official or non-official by Central/State Government on Board of Directors of Multi-State Cooperative Society can be revoked before expiry of full term fixed for elected members and "nomination" cannot be equated with "employment". In the present case, since the nominations of the petitioners were not based upon any rules or regulations prescribing qualifications, age, etc., and since the same was based on subjective satisfaction of respondent Nos.2 and 1, I am inclined to read the doctrine of pleasure into the provisions of statute and bye-laws not merely for the purpose of nomination but for

the purpose of removal also. In this behalf, the principle underlying Section 16 of the Bombay General Clauses Act, 1904 and General Clauses Act, 1807 would squarely apply whereby it can be said that the power to nominate would include the power to remove unless different intention appears in the statute, which is not so in the present case. In view of this, the nomination of the petitioners in the first committee of management being not an employment governed by any rules and/or regulations, the same cannot be governed by Articles 14 and 15 of the Constitution of India. In this connection, it would be appropriate to refer to the judgment of the Supreme Court in Amarjeet Kaur's case (supra). In the said case the Supreme Court has held that the discretion of the Government in appointment as well as removal is untrammelled. It is in public interest because it is part of the policy (and its implementation), laid down by the Government. It must be recognized that each political party which forms the government comes into power with promises and assurances in regard to social, political and economic welfare of the people. The change in the social policy and programme with the democratic change of the rulers are, thus part of our social life. It is further held in the said decision that what is true about the discretion of the Government in the appointment as a Chairperson is equally true about the discretion of the government in the removal of the Chairperson as the power to appoint includes the power to remove. In the said decision the Supreme Court has further held that the post of the Chairperson of the Central Social Welfare Board is a unique post and the suitability of the persons for appointment or unsuitability of a person for retention are within the realm of policy and absolute discretion of the Government and the Supreme Court refused to grant any reliefs claimed by the petitioner in that case.

26. In Unjha Agricultural Produce Market Committee's case (supra), learned Single Judge of this Court has considered the provisions contained in Gujarat Agricultural Produce Markets Act, 1963 and Bombay General Clauses Act, 1904 and held that where on a reconstitution of a market committee under Section 54 of the Gujarat Agricultural Produce Markets Act, 1963, some persons are nominated as members of the new committee, members of the old committee stand automatically removed. The State Government which appoints members has a right to remove them by virtue of sections 14 and 16 of the Bombay General Clauses Act, 1904. Such persons are not entitled to any hearing as "pleasure doctrine" continues to apply even under the Republic of India.

27. In Dattaji Chirandas's case (supra), learned Single Judge of this Court had an occasion to consider the relevant provisions of the Gujarat Industrial Development Act and held that the pleasure doctrine and applicability thereof in the matter of appointment and removal of persons nominated to high public offices cannot be said to be arbitrary, unreasonable or unconstitutional in any manner. If such appointments are made initially by nomination on political considerations, there can be no justification in resisting termination of such appointments on political considerations. Such nominees appointed on political considerations do not have the will or authority of the people of the State unlike those elected by the people of the State.

28. Similar question arose before a learned Single Judge of this Court in Harisinh Pratapsinh Chavda's case (supra). In the said case, the challenge to removal of the Chairman of the Gujarat Water Supply and Swerage Board, Gandhinagar by the Government was the subject matter. This court, while upholding the action of the Government of removing the Chairman has observed that persons who hold a political office cannot invoke the protection of any of the three Articles, 14, 16 and 311 of the Constitution. They cannot invoke writ jurisdiction of the High Court. With the change in Government, these offices can be filled up by persons who share the same political philosophy. Political issues are not justiciable issues and 'the appeal should be to the polls and not to the Courts'. It is further observed that if a democratically elected Government felt that for effective implementation of its policies and programmes a change in the personnel was necessary, it could not be accused of mala fides or pursuing any act of vendetta. It is further held that the power to appoint persons to the office of Chairman by Government is not controlled by any guidelines. Persons so appointed can be removed by the Government under the proviso to Section 6 (1) of the Gujarat Water Supply & Sewerage Board Act, 1978.

29. In Krishna s/o. Bulaji Borate's case (supra), the Supreme Court, while dealing with Nagpur Improvement Trust Act, 1936 has held that removal of nominated trustee from office by the State Government at any time under Section 6 is covered by the doctrine of pleasure and, therefore, trustee removed under Section 6 of the Said Act cannot claim any right based on principle of natural justice. In paragraph 9 of the said judgment, it is inter alia observed that the removal spoken of here neither casts any stigma nor leads to any penal

consequences. This clearly reveals the doctrine of pleasure which is implicit in this section. In any statute expression of the will of the legislature may be explicit or it may be implicit. It is open for the courts, while interpreting any provision to spell or read with other provisions of the statute if so intended to read implicitly, in the absence of any explicit words that subserve the intent of the legislature.

30. The sum and substance of the ratio laid down in the aforesaid case law is that if the Government has a right to nominate it includes right to recall or remove the nominated member. Nomination of new nominees for the existing nominees in the first committee of management within the maximum time limit, would in substance amount to replacement of nominees in the very first committee of management so long as the tenure of the said first committee of management is not over. The said replacement cannot, by any stretch of imagination, be termed or regarded as the constitution of a second committee of management. In fact there is nothing like 2nd committee of management either under the provisions of the Act or even under the provisions of the Companies Act, 1956 since the Board is supposed to be existing in perpetuity till the company and/or the society remains in existence. The expression "first committee of management" occurring under the provisions of proviso (b) to sub-section (3) of Section 74C of the Act as well as under bye-law 21 (2) (A) is used to differentiate between nominated committee of management prior to the election and elected committee of management after election. It is under these circumstances that the committee of management after election is described as "new committee of management" under section 80A (1) of the Act. Even in case of a company under the Companies Act there is nothing like first Board, second Board or third board, inasmuch as the Directors in the Board may come and go but the Board remains in existence in perpetuity, i.e., the Board remains the same and at the best only reconstitution takes place. In view of the aforesaid state of affairs, even if the order under challenge uses the expression like 'new Board' being nominated, the said order cannot get invalidated on that count alone inasmuch as in view of the language of Section 80A of the Act new committee of management comes into play only on election. However, the fact remains that the committee of management which was nominated remained the same despite change in the members and at the best it can be said to have been reconstituted.

31. Similar question arose before the Supreme Court

in Sharad Vasant Kotak's case (supra). In the said case the Supreme Court was dealing with the provisions contained in Partnership act. In that case the Supreme Court has observed that inducting of a new partner in the place of a partner who has expired, existing firm could only be said to be reconstituted and the registration of firm does not get ceased. In view of the aforesaid judgment of the Supreme Court, in the instant case, all the petitioners have been replaced by other members as per bye-law 21 (2) (a) of the bye-laws of the society and, therefore, it is within the power of respondent No.2 which is popularly known as application of doctrine of pleasure and the same is exercisable from time to time.

32. The contention that replacement of petitioners by fresh nominees in the first committee of the management is by way of political consideration and, therefore, the order is passed at the behest of the State Government in colourable exercise of powers is liable to be struck down, has also no substance in view of the fact that even if the replacement of the petitioners by fresh nominees in the in the first committee of management is by way of political consideration, then in that case also, this Court would not like to enter into the said question since essentially they are political issues and as observed in the case of Bhut Nath v. State of West Bengal, 1974 SC 806, political issues are not justiciable issues and the appeal in that behalf should be to the polls and not to the courts.

33. It is not out of place to record that respondent No.2 as Director of Sugar for all practical purposes is the Registrar under the provisions of the Act which empowers him to give directions and/or instructions from time to time for exercising various governmental controls in respect of Registrar of Co-operative Societies. At the same time, respondent No.1 State has direct stake and interest in the functioning of the Society, since it has subscribed to the extent of crores of rupees in the share capital of the Society and has also guaranteed the repayment of the term loan to the tune of 60% of the amount of the total project cost which also runs into crores of rupees. In view of this, respondent No.1 State is always interested to see that the functioning of the Society is smooth, harmonious and effective, without there being any discord between the Government and the first committee of the management nominated by the Director of Sugar with the consent of the State Government from time to time. It may also be noted that removal of the petitioners from the first committee of management is neither arbitrary nor malafide when the

same is based on the doctrine of pleasure. If the democratically elected Government presumes that for effective implementation of its policies and programmes, a change in the nominees was necessary, the same can be done at its pleasure, whereby it cannot be accused of malafides. On having perusal of the averments made in the petition, no details of malafides are borne out and there is merely a whisper of the same which cannot taken into account by this Court. The Supreme Court in Ghanshyam Singh's case (supra) has held that if no proof, particulars or evidence is furnished in the petition with regard to averments of malafide, it cannot be made a basis for inspection by the Court.

34. Similar question arose before a learned Single Judge of this Court wherein the challenge was to the order passed by the Director of Sugar, Gujarat State, Gandhinagar, removing the petitioners as Directors of Shree Kamrej Vibhag Sahakari Khand Udyog Mandli Limited and appointing respondent Nos.3 to 9 as Directors of the said society. The learned Single Judge (Coram: J.M. Panchal, J.) while recording interim order dated December 24, 1997 in Special Civil Application No. 7408 of 1997 has while rejecting the prayer for interim relief has referred to the ratio laid down by the Supreme Court in the case of Om Narain Agarwal and others v. Nagar Palika, Shahjahanpur and others, AIR 1993 SC 1440. In para 11 of the said judgment, the Supreme Court has observed as under:

> "In our view, such provision neither offends any Article of the Constitution nor the same is against any public policy or democratic norms enshrined in the Constitution. There is also no question of any violation of principles of natural justice in nor affording any opportunity to the nominated members before their removal nor the removal under the pleasure doctrine contained in the fourth proviso to section 9 of the Act puts any stigma on the performance or character of the nominated members. It is done purely on political considerations."

On the basis of the aforesaid observations of the Supreme Court, the learned Single Judge of this Court has refused the interim relief prayed for in that petition. It may be appreciated that facts of the case in Special Civil Application No. 7408 of 1997 were identical to the facts of these petitions.

35. Mr. Nanavati, learned Senior counsel for the

petitioners pressed into service the interim order dated September 26, 1995 recorded by the Division Bench of this Court (Coram: R.A. Mehta, Actg. C.J. & H.L. Gokhale, J.) in Special Civil Application No. 6960 of 1995 and contended that in that petition interim relief was granted and the respondents were directed to hand over charge of management of Shri Khedut Sahakari Khand Udyog Mandali Limited, Pandwal to the original members and office bearers of the society. The said order was subject matter of challenge before the Supreme Court in SLP and the SLP was also dismissed and, therefore, it is urged by the learned counsel for the petitioners that the principles enunciated in the said order by the Division Bench of this Court in the aforesaid case is squarely applicable to the facts of the present case. On having perusal of the full text of the said order, the contention advanced by the learned counsel for the petitioners is not well founded. As the said order is an interim order, it can hardly be treated as a binding precedent. Besides this, in the said order, it was observed that Government had no stake and/or interest in the society in question, whereas in the present case, it is the other way round. The question whether nominated members who have accepted the appointment till further orders can be removed by the Government or not was not at all considered by the Division Bench in the aforesaid matter while passing the interim order. Therefore, the interim order passed by the Division Bench on September 26, 1995 in Special Civil Application No. 6960 of 1995 cannot be made applicable to the facts of the present case.

36. The judgment in Tarlochan Dev Sharma's case (supra) relied upon by the learned counsel for the petitioners does not apply to the facts and circumstances of the present case inasmuch as in the said judgment, the question was with regard to removal of an elected President of the Municipality on account of the misconduct of 'abuse of powers' under section 22 of the Punjab Municipal Act as a result of disciplinary proceedings by the Principal Secretary, State of Punjab at the behest of politicians where the Supreme Court took the view that misconduct alleged was not proved and hence removal was held bad. As against this, in the present case, the petitioners were replaced by the order under challenge which imposes no stigma. The said order has not been passed under Section 22 (3) or Section 23 (2) or Section 81 of the Act which provide for similar provisions like Section 22 of the Punjab Municipal Act in the above referred judgment.

37. Same way, the judgment of the Supreme Court in Anirudhsinhji K. Jadeja's case (supra) relied upon by the learned counsel for the petitioners also will not be applicable to the instant case inasmuch as the case before the Supreme Court was in respect of Section 20A of the erstwhile TADA which mandatorily required the prior approval of DSP before recording any information about the commission of an offences and on that ground it was held that in the absence of the prior approval of DSP, Rajkot in that case, the case of TADA against the appellant of that case was held non-est. In the instant case, there is nothing like prior approval required to be taken while nominating the first committee of management.

38. The judgment of this Court in Ambalal Manilal Makwana's case (supra) relied upon by the learned counsel for the petitioners is also not applicable to the facts of the present case inasmuch as as the bye-laws in question are not ultra vires the provisions of the Act wherein in that case one of the main challenges was against one of the bye-laws of the Society being ultra vires Rule 15 of the Rules.

39. Seen in the above context, on the factual scenario as well as the law enunciated by the Supreme Court as well as this Court it has to be held that the persons so nominated at the pleasure of the Government can be removed or nomination can be recalled by the authority in view of the pleasure doctrine which is applicable to the facts of the present case. On overall view of the matter, I do not find any substance in the challenge made to the impugned orders passed by respondent No.2 and, therefore, both the petitions deserve to be dismissed.

40. For the foregoing reasons, both the petitions fail and accordingly they are dismissed. Rule issued in both the petitions is discharged with no order as to costs. Ad-interim relief directing respondent Nos.4 to 15 not to hold further meeting as well as to take policy decisions shall also stand vacated.

(A.M. Kapadia, J.)

41. At this stage, Mr. N.D. Nanavati and Mr. B.S. Patel, learned counsel for the petitioners pray that interim relief which was granted earlier in both the petitions may be continued for a period of two weeks so as to enable the petitioners to approach the Division

Bench by filing Letters Patent Appeal as intra-Court appeal is provided against the judgment of the Single Judge of this Court. According to Mr. Nanavati, learned Senior counsel, the interim relief was operating till today and, therefore, if it is continued for a few days, no prejudice is going to be caused to either of the parties in view of the fact that there is winter vacation for one week and the petitioners cannot file Letters Patent Appeal till reopening of the Court. Mr. B.S. Patel, learned advocate submitted that the first meeting of the Society in respect of Special Civil Application No. 3821 of 2001 has not been held so far and, therefore, the interim relief which was continued till today may be continued for a few days more. Mr. Premal Joshi, learned AGP who appears for respondent Nos.1 and 2 and Mr. K.G. Vakharia, learned Senior Advocate who appears for respondent Nos.4 to 15 have contended that the newly nominated members have already taken over the charge and have held the first meeting and if the interim relief is continued it would create more hardship in the day-to-day business of the affairs of the societies and, therefore, they requested that the prayer for continuing interim relief may be rejected.

42. It is true that earlier this Court had while granting interim relief directed respondent Nos.4 to 15 not to hold further meeting as well as to take policy decisions. By this judgment I have dismissed the petitions and vacated the interim relief. If the interim relief is continued, it would adversely affect the management of the societies and more particularly when the newly nominated directors have already taken over charge they should not be deprived of their right to hold meeting as well as to take policy decisions. Besides this, I have merely followed the law declared by the Supreme Court as well as this Court in reported decisions and, therefore, continuation of the interim relief would run contrary to the principles of law propounded by the Supreme Court as well as this Court and hence the prayer to continue the interim relief to enable the petitioners to approach Division Bench by way of Letters Patent Appeal cannot be entertained and accordingly the prayer for continuing the interim relief is rejected.

(A.M. Kapadia, J.)

(karan)